

SPN/LG CIRCULAR No.3/2006

The Secretary General
Convention of Scottish Local Authorities

The Chief Executive
Scottish Local Authorities

The Chief Executive
Water Authorities

The Principal Reporter
Scottish Children's Reporter Administration

The Chief Executive
Scottish Environment Protection Agency

The Director General
Strathclyde Passenger Transport Executive

The Clerk
Strathclyde Passenger Transport Authority

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Your ref:
Our ref: LGT/01/15/00

30th October 2006

Dear Sir/Madam

THE LOCAL GOVERNMENT PENSIONS SCHEME (SCOTLAND) AMENDMENT (NO.3) REGULATIONS 2006 (SSI/2006/514)

I am writing about the above mentioned Amendment Regulations which come into force on 1st December 2006 with the exception of regulations 10 and 11 which have effect from 1st October 2006. These regulations amend the Local Government Pension Scheme (Scotland) Regulations 1998.

A copy of these amendment regulations can be accessed via the following link, [SSI 2006/514](#) additional copies can also be purchased from the Stationery Office.

Background

The LGPS has a normal pension age of 65, and members who choose to retire earlier than this will generally have their pension actuarially reduced to reflect the fact that it is in payment for longer. However, under the Rule of 85 members who decide to retire early and who meet the requirements of the Rule can receive an unreduced pension before their normal pension age. Scottish Ministers consider that the Rule will breach the terms of the EC Directive (2000/78/EC) on equality in the

workplace, which makes provisions in the rules of occupational pension schemes which are discriminatory on age grounds unlawful unless they fall within limited exceptions. The Directive requires that such rules are removed by December 2006.

Effect of the Regulations

The new regulations remove the 85 year rule from the Scheme from 1 December 2006, in order to comply with the EC Directive. The regulations provide transitional protection to existing members: existing scheme members who will be 60 and who satisfy the 85 year rule by 31 March 2020 will be entitled to receive their pension early without any actuarial reduction; other existing members will not be subject to actuarial reduction in relation to any service before 1st April 2008.

The Regulations also introduce a number of other changes to ensure compliance with age discrimination legislation, and insert the Scottish Police Services Authority into the Schedule of Scheme Employers, as well as correct minor drafting errors in the Local Government Pension (Scotland) Amendment (No.2) Regulations 2006.

Consultation Process

The consultation process was carried out by way of an initial consultation from 2 September 2004 to 2 December 2004 and a further consultation from 29 June to 31 July 2006, which set out the planned amendments to the Local Government Pension Scheme (Scotland) Regulations 1998, in order that they comply with provisions as set out in the EC Directive 2000/78/EC and the Finance Act 2004. The draft regulations were subsequently split and laid as two parts: the Local Government Pension Scheme (Scotland) Amendment (No.2) Regulations 2006 (SSI 2006/468) and the Local Government Pension Scheme (Scotland) Amendment (No. 3) Regulations (SSI 2006/514).

In respect of the consultation process on the removal of the Rule of 85, it was found that approximately 30% of respondees indicated that they still dispute that the Rule of 85 requires to be removed and 50% considered that full protection should be provided to all existing members to ensure parity with other public sector schemes. However no new evidence was presented that would support the consideration of any alternative options of extended transitional protection to be implemented. A number of respondents questioned the need to remove Regulation 24(4). Prior to the introduction of the Rule of 85, the rule which is now Regulation 24(4) enabled individuals to retire between age 60 and 65 with an unreduced pension where they had 25 years service. The consultation exercise proposed that this should be removed alongside the removal of the Rule of 85. Regulation 24(4) demonstrates age discrimination and does not appear to be permitted by the exceptions in article 6.1 or 6.2 of the Directive.

The majority of respondents supported the Scottish transitional protection proposals, although this results in a cliff-edge effect for some members, it provides a more generous level of protection for Scottish members. A wide range of technical and process points made were used to inform the final regulations.

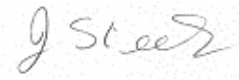
Executive Note

The Stationery Office now publish an Executive Note alongside new Regulations. The Note briefly describes a Statutory Instrument and its purpose, and is prepared for the information of Parliamentary Committees which examine proposed regulations. This can be accessed for these Regulations by clicking the following link. [Executive Note](#)

**Please draw this circular to the attention of Pension Managers and Superannuation Sections.
You may also wish to draw it to the attention of the Directors of Finance and Administration.**

Any enquiries regarding this circular and the amending SSI should be made to David Lauder by telephone on 01896 893227 or by e-mail to david.lauder@scotland.gsi.gov.uk.

Yours faithfully

A handwritten signature in black ink, appearing to read 'J Steel', is positioned above the typed name.

JEAN STEEL
Policy Officer, LGPS